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India

Post: New Delhi

Government Clarifies Provisions for Multi-Brand Retail Investment

Report Categories:

Retail Foods

Snack Foods

Beverages

Fresh Fruit

Agriculture in the News

Agricultural Situation

Trade Policy Monitoring

Exporter Guide

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Report Highlights:

On June 6, 2013, the Ministry of Commerce and Industry issued answers to queries from prospective investors related to foreign-direct investment in multi-brand retail. The Government of India approved 51 percent foreign direct investment in multi-brand retail in September 2012 subject to certain restrictions. Thus far, no foreign retailers have sought approval to invest in the retail food sector and

these clarifications add an additional set of restrictions to the investment process.

Disclaimer: This summary is based on a cursory review of the subject announcement and therefore should not be viewed under any circumstance, as a definitive reading of the regulation in question, or of its implications for U.S. agricultural export trade interests.

On June 6, 2013, the Ministry of Commerce and Industry issued answers to queries raised by prospective investors on the recently announced foreign-direct investment (FDI) policy in multi-brand retail. The Government of India approved 51 percent FDI in the multi-brand retail trade in September 2012 (see [IN2120](#)) subject to certain conditions. Thus far, no foreign firms have sought approval to invest the retail food sector.

The clarification issued on FDI policy relates to the following issues –

1. Sourcing norms from small and medium enterprises.
2. Investment in front-end and back-end infrastructure.
3. Investment in greenfield or brownfield front-end entities.
4. Front-end retail franchise stores in non-FDI states.
5. Policy on E-commerce.
6. Other clauses such as State discretion, population restrictions and small industry certifications.

Comment: According to the clarifications issued, foreign retailers entering India must invest 50 percent in the creation and development of new back-end infrastructure without acquiring existing assets. The foreign retailer cannot acquire existing retail stores and any investment towards acquiring existing front-end retail stores will not be counted towards back-end infrastructure. The foreign retailers will not be allowed to franchise their stores, all stores must be company owned and operated. The sourcing requirement of 30 percent is applicable to manufactured and processed products; procurement of fresh produce is not covered.

Details of Notification:

Type of Regulation: Clarification on Circular

Public Notice Date: June 6, 2013

Proposed Date of Adoption: Effective June 6, 2013

Notification Text as published: The full text of this clarification can be accessed on the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry ([MBRT Clarification 06June2013](#)) website.

Products Affected: Food Products

Agency in Charge: Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India

A list of documents related to this latest announcement follows:

Consolidated FDI Policy 2013 - http://dipp.nic.in/English/Policies/FDI_Circular_01_2013.pdf

The text of the announcement is provided below.

CLARIFICATION ON QUERIES OF PROSPECTIVE INVESTORS/ STAKEHOLDERS

ON FDI POLICY FOR MULTI-BRAND RETAIL TRADING
(Paragraph 6.2.16.5 of ‘Circular 1 of 2013-Consolidated FDI Policy’)

Issue	Clarification/ comment
<p>30% sourcing from Small and Medium Enterprises:</p> <p>(a) Can the Foreign Investor purchase the 30% of the total procurement of manufactured or processed goods by the SME but distribute them either through the retail operation and/ or cash & carry operations and/ or export for the Foreign Investor’s International retail & trading operations?</p> <p>(b) Whether a ‘small industry’ referred to the actual legal entity of manufactured/processed products purchased with investment within USD 1 million which shall not include its parent company, subsidiaries, affiliates and/or franchisor? Whether farmer, cooperative, agro-business including dairy, poultry and fresh, distributor and reseller of major branded companies will be counted as a SME if its investment is within USD 1 million?</p>	<p>(a) No. The 30% sourcing will be reckoned only with reference to the front end store. As such a multi-brand retailing entity cannot engage in any other form of distribution.</p> <p>(b) The phrase used in the FDI policy is 'small industries' with maximum investment in Plant & Machinery at USD 1 million. The sourcing condition pertains only to manufactured and processed products. Procurement of fresh produce is not covered by this condition.</p>
<p>50% investment in back-end infrastructure</p> <p>(a) Can the new retail entity to be set up acquire supply chain/back-end assets or stake from an existing company having such assets and will such assets /stake values be counted towards the back-end investment requirement?</p> <p>(b) Would investment (equity stake less than 100%) in a company engaged in development of back-end infrastructure be considered part of the investment in back-end infrastructure if one can certify its use towards back-end capacity?</p>	<p>(a) No. Entire investment in back-end infrastructure has to be an additionality. The entity can invest only in greenfield assets and it will not be possible to acquire supply/chain/backend assets or stakes from an existing entity.</p> <p>(b) No. Such investment in the equity of the existing infrastructure company will not be treated towards the fulfillment of the conditionality of 50% investment in back-end infrastructure.</p>
<p>(c) Whether investment in back-end infrastructure for instance for storage, warehouses, agricultural produce infrastructure in non-FDI approved states will be counted towards investment in back-end infrastructure.</p>	<p>(c) FDI in these activities is already allowed throughout the country. As far as MBRT is concerned FDI in non-FDI approved States in back-end infrastructure will be counted provided it is an additionality.</p>

<p>(d) Will the new retail entity include back-end facilities that have the capacity to supply its own businesses and other businesses. It should be free to supply back-end services (e.g. logistic supply, goods) to related or third party companies, including but not limited to the company's existing wholesale entity and the retail franchisee operated by its partners.</p> <p>(e) Would a company operating in wholesale trading/ cash & carry trading be considered as a company providing back-end infrastructure in efficiently distributing the goods to the small retailers and professional/ business users?</p> <p>(f) Would the minimum investment of 50% of the total FDI in back-end infrastructure be mandatorily invested in the same state where the retail store is proposed to be set up?</p>	<p>(d) As per the conditions for wholesale cash & carry trading, such an entity is not permitted to undertake retailing of any form. Therefore, both the businesses have to be kept separate through different entities. As regards supplies by MBRT company to franchisees run by its partners, it is clarified that the policy envisages multi-brand trading in retail. The MBRT entity is not envisaged to undertake wholesale activity i.e. B2B. The front-end stores set up by MBRT entity will have to be 'company owned and company operated' only.</p> <p>(e) No. The wholesale trading/ cash & carry trading cannot be considered to be providing back-end infrastructure. FDI in MBRT will require fresh investment in back-end infrastructure.</p> <p>(f) The investment towards back-end infrastructure can be made across all states irrespective of the fact whether FDI in MBRT is allowed in that state or not.</p>
<p>Investment in Front-end / back-end infrastructure</p> <p>(a) If the same foreign investor is an investor in various companies for logistics, services etc., will the back-end investment made by such investor be aggregated?</p> <p>(b) Can back-end and front-end infrastructure be held by separate entities? Can the back-end entity be 100% owned by a foreign entity since 100% FDI is permitted under the automatic route for a company engaged in back-end infrastructure related?</p>	<p>(a) No. Investments in multiple infrastructure companies would not be counted towards fulfillment of condition of investing 50% in the back end infrastructure.</p> <p>(b) The back-end entity may be 100% owned by a foreign entity as long as the investor in MBRT has been able to satisfy the condition that 50% of the FDI brought into the country for MBRT has been utilized in back-end infrastructure as an additionality.</p>
<p>Small industry certification:</p> <p>Suppliers should have some form of</p>	<p>Certificate issued by District Industries Centre</p>

authentication to confirm their status as ‘small industry’.	would be adequate authentication to confirm status of supplier as ‘small industry’.
Population Restrictions on operations (a) For determining whether a city has a population of more than 10 lakh, it should not be limited to the data as per the 2011 census. When a city reaches such population level after 2011, it should be allowed to self-certify that it has achieved the population. Further, the population restriction should recognize that twin cities or co-located cities may be eligible based on their combined population.	(a) Census data is the most authoritative source of population data, which is accepted by all the States. Therefore, no other data source or self-certification can be permissible.
State Discretion: (a) The policy should not give states that have approved FDI in multi-brand retail the ability to change the fundamental rules of the FDI policy including but not limited to the 30% ‘small industry’ sourcing and minimum investment in back-end infrastructure requirements. (b) In case, the foreign investor approaches a State Government for setting up a retail store, can the state Government put additional conditions to operate in that state? (c) In case, the foreign investor approaches a State Government not included in the list of states supporting FDI in MBRT, would the approval of such new state be valid before they are notified to the DIPP for addition in the list?	(a) States which have opted for inclusion in the FDI policy have already been notified. Any amendment in the policy falls under the domain of the Central Government. However, State laws/ regulations will apply. (b) FDI policy in MBRT is subject to the applicable State/Union Territory laws/ regulations. The State Governments have the prerogative of imposing additional conditions accordingly. (c) If the foreign investor approaches a State Government not included in the list of states supporting FDI in MBRT, consent from the State Government would be sufficient, and a suitable amendment to the policy will be issued by the Central Government.
Policy on E-commerce Allowing online sales will enable the Company to better serve Indian customers through enhanced convenience and assortment as well as improve the site customer experience. This will allow the company to make significant investments in Logistics.	Multi-brand retail trading by way of e-commerce is not permitted.
Front end retail franchise stores in non- FDI states:	

Whether the back-end infrastructure could support front end retail franchise stores in non-FDI states at arm's length price.	Back end infrastructure, so developed, can be used across the states by any entity. Franchisee model is not permissible as per extant FDI policy on MBRT. The front-end stores set up by MBRT entity will have to be 'company owned and company operated' only.
Investment in greenfield or brownfield front-end entities Can the minimum investment of US\$ 100 Million be used to acquire existing retail stores or setting up new retail stores or a combination of both?	50% of the investments brought in, must be invested in back-end infrastructure, and any amount spent in acquiring front end retail stores would not be counted towards back-end infrastructure. The front-end retail stores must also be set up as an additionality and not through acquisition of existing stores

Following issues are under consideration:

- i. Sourcing restriction amongst 'group companies'.
- ii. Requirement of 50% investment in 'backend infrastructure' within three years of the first tranche of FDI.
- iii. Requirement of 30% sourcing from 'small industry'. Whether sourcing from such 'small industry' can be allowed towards fulfillment of this conditionality, if it outgrows, and if so, till what period?